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December 23, 1998

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 4864

Dear Sir:

This firm represents both MSE, Inc. and Don Peoples, CEO of MSE, Inc. as indicated in the attached statement of designated counsel. This letter is intended to respond to your communication of December 2, 1998 (received by MSE, Inc. and Mr. Peoples on December 10, 1998) concerning a complaint filed with the Federal Election Commission (Commission). The complaint alleges violations of the Federal Election Campaign Act of 1971, as amended (the Act). For the reasons discussed below, no action should be taken by the Commission in this matter against MSE, Inc. or Mr. Peoples.

A. Background

MSE, Inc. (MSE) is a corporation organized under the laws of the State of Montana. MSE, which has been in business since 1974, is a technology, applied engineering, and infrastructure development company. MSE has three subsidiaries: MSE Technology Applications, Inc.;^{1/} MSE-HKM, Inc.; and MSE Infrastructure Services. Altogether, MSE has about 400 employees, of which about 250 work at its Western Environmental Technology Office in Butte, Montana. In its last fiscal year, MSE had gross revenues of approximately \$43 million.

^{1/} MSE Technology Applications, Inc., is a government contractor within the meaning of section 441c of the Act. MSE Technology Applications, Inc. tests and evaluates environmental technologies, provides engineering services to agencies and private clients, and applies technology in commercial applications.

Mr. Isaacson alleges violations of law in connection with an event organized by Mr. Peoples and held on August 12, 1998 to raise funds for U.S. Senator Kit Bond's re-election campaign committee, "Missourians for Kit Bond." As the attached statement by Mr. Peoples indicates, during his visit to Butte in August, Senator Bond toured MSE's facilities and met with some of MSE's senior management and technical employees. The tour included MSE's Western Environmental Technology Office, as well as a contaminated mine site in the Butte area. The tour and meeting with MSE senior management and technical employees focused exclusively on issues related to MSE's business. There was no discussion of Senator Bond's re-election, and no discussion of fundraising in connection with his re-election. Later that day, Senator Bond was the featured guest at a fundraising lunch held at a local restaurant.^{2/} About 30 citizens of Butte attended the fundraising event. Twelve employees of MSE were present, and made contributions to the "Missourians for Kit Bond" committee ranging from \$750 to \$1,000. Altogether, about 13 MSE employees contributed a total of approximately \$10,000 to the committee. A number of other individuals not employed by MSE who were at the lunch also contributed to the Bond campaign committee.

B. Response to Specific Allegations Made by Mr. Isaacson

Mr. Isaacson alleges: (1) the fundraising activities of Mr. Peoples constituted "political bribery"; (2) either Mr. Peoples or MSE may have put "pressure" on MSE employees to contribute to the Bond campaign; and (3) contributions to the Bond campaign by MSE employees may have been reimbursed by MSE or some other person. The complaint provides no facts upon which the Commission might judge the truthfulness of the allegations. Indeed, all of the allegations are without merit, and the Commission is urged to dismiss the complaint.

The complaint is materially deficient. In fact, the complaint is a "shambles."^{3/} It cites no statutory provisions that are alleged to have been violated. It fails to allege all of the elements necessary to constitute a violation. With respect to the allegations of "pressure" and

^{2/} MSE made no expenditures in connection with the fundraising event. The event was organized by Mr. Peoples on his own time. The costs of the lunch and Senator Bond's lodging were paid for by Citizens for Responsible Government--Employees of MSE, Inc. (MSE PAC), MSE's separate segregated fund, a qualified political committee registered with the Commission. These costs were reported by MSE PAC in its October 15, 1998 filing with the Commission. (The disbursements, which totaled \$539.44, were properly itemized and reported as in-kind contributions to the Bond campaign committee on Schedule B of the report. However, on the Detailed Summary Page of the report the disbursements were reported inadvertently on line 21b, "Other Federal Operating Expenditures," rather than on line 23, "Contributions to Federal Candidate Committees and Other Political Committees." MSE PAC will submit an amended report to the Commission correcting this error.)

^{3/} In re Federal Election Campaign Act Litigation, 474 F. Supp. 1044, 1047 (D.D.C. 1979).

reimbursement, Mr. Isaacson's letter fails to state a complaint; it merely poses a question of whether such activities may have occurred. Further, the complaint offers no evidence to support the assertions. There is no showing of any wrongdoing save for the unsupported assertions made in the complaint. For these reasons alone, the Commission should decide to take no further action.^{4/}

The lack of information contained in the letter not only fails to comply with the Commission's regulations, but makes it more difficult for MSE or Mr. Peoples to respond. The complaint does not differentiate between statements based on personal knowledge and statements based upon information and belief.^{5/} It is clear from the complaint that Mr. Isaacson has no personal knowledge of any violation of law with respect to this matter. Nor has Mr. Isaacson identified the source of information that gives rise to his belief in the truth of his statements.^{6/} His letter cannot be said to contain a "clear and concise recitation of the facts" describing a violation of a statute or regulation within the jurisdiction of the Commission.^{7/} And he fails to supply any documentation in support of his claims.^{8/} The Commission may find that a complaint that does not comply with these requirements "provides insufficient information, and for that reason, may vote to take no action on the complaint."^{9/} The Commission should do so in this case. If the Commission chooses to consider the complaint notwithstanding these deficiencies, the following responds to the specific allegations contained in the complaint.

^{4/} Id. Mr. Isaacson's failure to supply any factual basis for his complaint is even more inexcusable given the fact that the Commission returned the complaint to him by letter of November 4, 1998 because it did not meet the requirements of the Act. Despite being afforded an additional opportunity to support his complaint with facts, Mr. Isaacson did not do so.

^{5/} 11 C.F.R. § 111.4(c) (1998).

^{6/} Id., § 111.4(d)(2).

^{7/} Id., § 111.4(d)(3).

^{8/} Id., § 111.4(d)(4). Mr. Isaacson encloses two newspaper articles, but they do not demonstrate any improper contribution. To the contrary, they indicate that the activities of MSE and its employees were legal. One of the articles quotes the statement of the executive director of the Center for Responsive Politics that "[w]hat you have seen is how the game is played." The clear thrust of the statement, as well as the article as a whole, is that while the activities of MSE and its employees in participating in the fundraising event for Senator Bond were within the law, the law should be reformed.

^{9/} Federal Election Commission, "Amendments to Federal Election Campaign Act of 1971; Regulations Transmitted to Congress," 45 Fed. Reg. 15080, 15088 (March 7, 1980).

1. "Political Bribery"

Mr. Isaacson complains to the Commission that "Don Peoples *[sic]* conduct in raising funds for Senator Bond as leader of MSE is clearly political bribery." Mr. Isaacson states that because (a) certain employees of MSE made contributions to the political committee of Senator Bond, and (b) the Senate Appropriations Committee's Subcommittee on VA-HUD-Independent Agencies, which Senator Bond chairs, appropriated funds for research and services conducted by MSE, MSE and Don Peoples therefore committed "political bribery." Mr. Isaacson's complaint fails to state a violation of law under the jurisdiction of the Commission. His statement, at best, is a general indictment of the campaign finance system established by law that is currently in place in our nation. The allegation does not allege a violation of the FECA, the Presidential Election Campaign Fund Act, or the Presidential Primary Matching Payment Account Act. Neither can the allegation in the complaint be broadly interpreted to be a violation of these laws. The complaint is outside of the Commission's jurisdiction and the Commission should take no further action on it.^{10/}

Perhaps Mr. Isaacson uses the term "political bribery" to mean bribery of a Member of Congress under 18 U.S.C. § 201 (1994). If that is what Mr. Isaacson means, nothing could be further from the truth. In any event, it is not necessary to discuss such a charge in this response because, as the Commission knows, an allegation of bribery of a public official under that section of the U.S. Code is not within the jurisdiction of the Commission.^{11/}

2. "Pressure"

Mr. Isaacson asks: "[w]here any of the contributions made by MSE, Inc. employees to Senator Bond based on pressure from Don Peoples or MSE, Inc. on the contributors . . . ?" Commission regulations state that coercion, such as the threat of a detrimental job action, financial reprisal, or force, may not be used to urge any individual to make a contribution to a candidate or political committee.^{12/} As the attached statement of Mr. Peoples affirms, employees were not pressured. Mr. Isaacson has provided no information to support the allegation implicit in his query (if indeed he is even alleging such "pressure," rather than simply asking the Commission to investigate the possibility of it). As such, it is difficult to render any explanation or clarification other than to reiterate the denial that Mr. Peoples has made in his attached statement. Certainly, the subjects of Senator Bond's visit and the fundraising lunch were discussed by Mr. Peoples and senior MSE employees. However, corporations may make communications "on any subject" to the restricted class, including

^{10/} 2 U.S.C. § 437(g)(a)(1) (1994); 11 C.F.R. § 111.4(a) (1998).

^{11/} Id.

^{12/} 11 C.F.R. § 114.2(f)(2)(iv) (1998).

soliciting contributions to a candidate.^{13/} All communications made to employees by MSE and Mr. Peoples with respect to the fundraising event for Senator Bond were to employees within the restricted class. No pressure of any kind, including actual or threatened job discrimination or financial reprisal, or force, was placed on MSE employees at any time to contribute to Senator Bond's campaign or any other campaign.

3. Reimbursement

Mr. Isaacson also asks whether any of the contributions from MSE employees to Senator Bond's campaign were "reimbursed by MSE, Inc., or any other organization or person, either directly or indirectly, or were promises made to reimburse the contributions in any form in the future?" Again, Mr. Isaacson has offered "not a scintilla of evidence to support his assertion,"^{14/} which makes it difficult to state much more than the denial that Mr. Peoples has made in his attached statement. Neither MSE, Mr. Peoples, nor anyone else affiliated with MSE reimbursed any of the contributing employees for their contributions made to the Bond campaign committee. The contributions made by MSE employees to the Bond committee came from their personal funds. No promise has been made by MSE, Mr. Peoples, or anyone else affiliated with MSE to reimburse any of the contributing employees.

Finally, given that Mr. Isaacson has presented only allegations and not facts in his complaint, the Commission may be assisted in its review of the complaint by information that may pertain to Mr. Isaacson's motivation and credibility. Attachment 2 indicates that Mr. Isaacson's enmity toward MSE is rooted in a dispute over the siting of a correctional facility in Butte that was to be built by MSE. Mr. Isaacson was strongly opposed to the location of the correctional facility and apparently believed that MSE was teaming up with the Butte Local Development Corporation, a quasi-governmental entity in Butte, to apply "political and economic muscle" to influence the growth and direction of the city. Attachment 3 provides information that the Commission may or may not wish to consider in gauging Mr. Isaacson's credibility.

^{13/} 11 C.F.R. §§ 114.3(a), 114.2(f)(4)(ii) (1998).

^{14/} In re Federal Election Campaign Act Litigation, 474 F. Supp. 1044, 1047 (D.D.C. 1979).

C. Conclusion

For the reasons discussed above, the Commission should take no further action on the complaint.

Sincerely,

Ben Yamagata /HB

Ben Yamagata
Howard Bleichfeld
Counsel for MSE, Inc. and
Don Peoples

Attachments

ATTACHMENT 1

December 17, 1998

STATEMENT OF DON PEOPLES

RE: MUR 4864

My name is Don Peoples. I am Chief Executive Officer of MSE, Inc. I am aware of the complaint that was recently filed with the Federal Election Commission (Commission) alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the Act). It is my belief, based on personal knowledge as discussed below, that neither MSE nor myself have committed any violations of the Act.

MSE, Inc. (MSE) is a corporation organized under the laws of the State of Montana. MSE, which has been in business since 1974, is a technology, applied engineering, and infrastructure development company. MSE has three subsidiaries: MSE Technology Applications, Inc.; MSE-HKM, Inc.; and MSE Infrastructure Services. Altogether, MSE has about 400 employees, of which about 250 work at its Western Environmental Technology Office in Butte, Montana. In its last fiscal year, MSE had gross revenues of approximately \$43 million.

One of MSE's subsidiaries, MSE Technology Applications, Inc., is a government contractor within the meaning of section 441c of the Act. MSE Technology Applications, Inc. tests and evaluates environmental technologies, provides engineering services to agencies and private clients, and applies technology in commercial applications.

On August 12, 1998, Senator Kit Bond (R-MO) toured our facilities and met with some of our senior management and technical professional employees. The tour included our Western Environmental Technology Office, as well as a contaminated mine site in the Butte area.

In addition, Senator Bond was the featured guest at a fundraising event held at a local restaurant. Senator Bond has been a strong supporter in Congress for projects of importance to MSE, and I, as well as other MSE employees, wished to help Senator Bond in his reelection campaign. However, we took care to ensure compliance with Federal election laws. For example, I organized the event on my own time. MSE's political action committee, "Citizens for Responsible Government--Employees of MSE, Inc.," paid the costs of the lunch and Senator Bond's lodging. These costs were reported by MSE's PAC to the FEC. No MSE treasury funds were expended in connection with the fundraising event.

About 30 citizens of Butte attended the event. Of these, 12 were employees of MSE. Each of the MSE employees made contributions to the "Missourians for Kit Bond" committee ranging from \$750 to \$1,000. In all, about 13 employees of MSE made contributions to the committee, totaling approximately \$10,000. A number of others at the fundraiser who were not employees of MSE also contributed to the Bond campaign committee.

The various allegations contained in the complaint are false. There was no bribe made to Senator Bond or attempted bribe. Various employees of MSE simply made lawful political contributions to the Senator's campaign committee. Similarly, there was no coercion or "pressure" placed on employees to contribute. The complaint does not contain one bit of evidence to such effect because there is none. No pressure of any kind, including actual or threatened job discrimination or financial reprisal, or force, was placed on MSE employees at any time to contribute to Senator Bond's campaign or any other campaign.

With respect to the allegation of reimbursement, the contributions made by MSE employees to the Bond committee came from their personal funds. None of the contributors to the Bond campaign committee was reimbursed for their contribution by MSE, myself, or anyone else affiliated with MSE. No promise has been made by MSE, myself, or anyone else affiliated with MSE to reimburse any of the contributing employees in the future.

I believe Mr. Isaacson developed "bad blood" toward MSE as a result of a dispute over the siting of correctional facility in Butte that was to be built by MSE. Mr. Isaacson was strongly and publicly opposed to the location of the correctional facility. As the attached letter indicates, Mr. Isaacson apparently believed that MSE was teaming up with the Butte Local Development Corporation, a quasi-governmental entity in Butte, to create a "political-developer-big business" coalition to exert control over the city.

Don Peoples
Don Peoples

District of Columbia

SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, this 7th day of December, 1998.

Stephen P. Power
Notary Public Signature

My appointment/commission expires: 02/28/02.

(SEAL)

ATTACHMENT 2

April 29, 1998

Wmy
To: Butte Local Development Corporation

Re: Information about public funds programs

As a result of recent discussions in the community, there are many open questions about the use of public funds, public funding programs, and how those funds are managed.

Lack of information in general, and the apparent specific policy of Butte Local Development to refuse to provide information to the public, raises suspicions, even suspicions of mismanagement or corruption which may well be unfounded.

Clearly - our state's laws about the use of public funds assumes that openness and freedom of information were designed to discipline the agencies involved, to educate the community, and to prevent unfortunate misconceptions about the conduct of the negotiations and awarding of grants and financial support.

BLDC, the MSE conglomerate, and other organizations that work within the "not-for-profit" concept must have a sense of openness or there is an immediate assumption of inappropriate conduct by those agencies. The public perceives impropriety when secret decisions seem to be involved.

The coalition that exists in the political-developer-big business community in Butte is frightening to the public - and the political and economic muscle applied across-the-board in the recent prison effort by that coalition was so blatant and aggressive that a fundamental political movement to harness its conduct was born. That political base has an itch to sign-up for action against the "company town" mentality - and the present effort is to put an end to tax funding for BLDC through citizen process. While personally I don't think that movement can be stopped - much would be accomplished by opening BLDC operations to the public in the spirit that our state Constitution suggests, even requires.

Thank you.

h
John Isaacson
646 West Galena
Butte MT 59701

ATTACHMENT 3

December 22, 1998

Information That May Pertain to Complainant's Credibility

The following, which may reflect on the credibility of Mr. Isaacson, is provided for the Commission's information. The Commission may or may not wish to consider this information in assessing the credibility of Mr. Isaacson with respect to this matter.

1. Mr. Isaacson surrendered his license to practice law and was disbarred in the State of Missouri under order from the Missouri Supreme Court on July 25, 1973. At the time, he was under investigation for professional misconduct. The record in the case remains sealed.^{1/}
2. Mr. Isaacson entered the U.S. Penitentiary at Terre Haute, Indiana on September 25, 1973 to serve a sentence for conviction of interstate transportation of cashier's checks. He served two years of an eight year sentence, and received parole on February 5, 1975.^{2/}
3. Mr. Isaacson entered Montana State Prison from Cascade County on July 15, 1981 for conviction on charges of deceptive practices and issuing bad checks. He received a sentence of 10 years for each count, to run consecutively. The court suspended 15 years of his sentence. After the parole board granted parole, Mr. Isaacson was released from prison on April 26, 1982 and placed on probation.^{3/}

^{1/} Telephone Interview with John Howe, Chief Disciplinary Counsel, Missouri Supreme Court (December 22, 1998).

^{2/} Telephone Interview with Kimberly J. Sanders, Legal Instruments Examiner, U.S. Penitentiary, U.S. Bureau of Prisons, Terre Haute, Indiana (December 18, 1998).

^{3/} Telephone Interview with Craig Thomas, Executive Director, Montana State Board of Pardons and Parole (December 15, 1998).

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4864

NAME OF COUNSEL: Ben Yamagata

FIRM: Van Ness Feldman, P.C.

ADDRESS: 1050 Thomas Jefferson Street, N.W.

Suite 700

Washington, DC 20007

TELEPHONE: (202) 298-1800

FAX: (202) 334-2416

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

12-17-98
Date

Donald D Peoples
Signature

RESPONDENT'S NAME: MSE, Inc. & Don Peoples

ADDRESS: 220 North Alaska

P.O. Box 4078

Butte, MT 59702

TELEPHONE: HOME ()

BUSINESS (406) 782-0463